

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**UNITED STATES OF AMERICA,**

Plaintiff,

**CRIMINAL NO. 07-CR-20627**

v.

**HON. MARIANNE O. BATTANI**

**D-5 WILLIAM NEIL,**

Defendant.

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**GOVERNMENT'S SENTENCING MEMORANDUM**

The United States, by and through its attorneys, TERRENCE BERG, United States Attorney, THOMAS DUKES and MONA SEDKY SPIVACK, Trial Attorneys for the United States Department of Justice's Computer Crime & Intellectual Property Section, hereby submits this Sentencing Memorandum.

**The Charges and Description of the Offense**

On June 22, 2009, William Neil, 46, a resident of Fresno, California, pleaded guilty to Counts 1 and 2 of the Indictment. Count 1 charged a conspiracy to violate the CAN SPAM Act, in violation of 18 U.S.C. §§ 371, 1037(a)(3) and (a)(4). Count 2 charged a substantive violation of the CAN SPAM Act, 18 U.S.C. §§ 1037(a)(4).

In December 2007, Neil was indicted, along with five other individuals, for his role in a criminal conspiracy to falsely register domains and send illegal spam e-mails with falsified header information in violation of the CAN-SPAM Act. As set forth more fully in the indictment, from in or about May 2005 through September 2005, Neil conspired with co-

defendants Alan Ralsky, Scott Bradley, Judy Devenow, John Bown, and Anki Neil to construct and maintain a computer network used to send tens of millions of “spam,” or unsolicited bulk commercial e-mail messages each day in furtherance of the conspiracy. The computer network, which was housed at the GDC Layer One co-location facility in Los Angeles, California, served as the backbone for the conspiracy.

During May 2005 through September 2005 time frame, Neil worked with the same individuals to register hundreds of domain names for the purpose of sending illegal spam e-mail in furtherance of the conspiracy. The domain names registered by Neil were generally nonsense words he made up. In registering the domain names, the defendant knowingly and intentionally used information that materially falsified the identity of the actual registrant of the domain names.

#### **William Neil’s Role in the Conspiracy**

William Neil was the Vice President and Chief Operating Officer for GDC Layer One, the company that provided network administration services and software development for the illegal spam e-mail operation. Neil served as the right-hand man for John Bown, GDC Layer One’s Chief Operating Officer throughout their involvement in the conspiracy, during which time Alan Ralsky was GDC Layer One’s sole client. Neil personally set up, repaired, and maintained the computer network at GDC Layer One that was used to send spam e-mails in furtherance of the conspiracy. Neil also served as the conspiracy’s most prolific domain registrar, and did so knowing that other members of the conspiracy were using the domain names he falsely registered to send millions of spam e-mails in furtherance of the conspiracy. In addition, Neil accompanied Bown to meetings in Las Vegas and California with other members

of the conspiracy, including Alan Ralsky and Frank Tribble. Finally, Neil accompanied Bown on a trip to Hong Kong, during which they confronted How Wai John Hui and other individuals regarding payments due to Ralsky from the sale of Chinese penny stocks being promoted through the “pump and dump” stock fraud conspiracy. Neil and Bown were attempting to collect the payments due Ralsky so that they could, in turn, be paid for the services GDC Layer One was providing in support of the conspiracy.

The evidence supporting the above facts consists primarily of internal e-mail and electronic chat communications among the conspirators, records and documents seized from the conspirators, bank records, expert analysis of e-mails sent during the spam campaigns, and information obtained from cooperators.

#### **Guidelines Calculation**

Neil has a base offense level of 6, with an 6-level enhancement based on his \$30,000 - \$70,000 gain from his illegal activities. Because the loss to any individual spam recipient is virtually impossible to measure, the application of § 2B1.1(b)(1) of the Sentencing Guidelines should be based on the defendant’s gain.

Neil, like the other defendants, has a 2-level increase because the conspiracy involved mass marketing and more than 10 victims. Further, he has another 2-level increase because the conspiracy involved sophisticated means. These sophisticated means include Neil’s and his co-conspirators’ use of complex mailing techniques that employed the use of proxies, false headers, and advanced spamming software that automated these features; the use of dozens of computer servers that frequently moved throughout the country and were ultimately based in California; the hiring of spammers located throughout the U.S. and in Russia and other countries; the

involvement of Chinese individuals, companies, and banks to facilitate the scheme; and the transfer of funds from U.S. to Hong Kong and Chinese bank accounts.

Based on the above factors, the plea agreement calculates the adjusted base offense level to be 16, with 3 points off for acceptance of responsibility, which results in a total offense level of 13. The plea agreement calculated Neil's guideline range as 24 - 30 months, based on an anticipated Criminal History Category of IV. Probation, however, calculated Neil's guideline range as 33 - 41 months, based on a Criminal History Category of VI. The plea agreement states in Section 2.B., that if the Court finds that the defendant's criminal history is higher than what is calculated in the sentencing worksheets attached to the plea agreement, and that if that finding results in a guideline range higher than 24 - 30 months, then the higher guideline range becomes the agreed range. In this instance, Probation has determined that Neil's Criminal History Category is VI, instead of the Category IV anticipated by the plea agreement. The government has thoroughly reviewed the criminal history analysis that Probation prepared for Neil, and concurs with Probation's finding that Neil's actual Criminal History Category is VI.

**CONCLUSION**

For all of the reasons stated above, the government recommends that the Court sentence defendant William Neil within the sentencing guidelines range that the Court finds to be applicable.

Respectfully submitted,

TERRENCE BERG  
UNITED STATES ATTORNEY

/s/THOMAS DUKES  
THOMAS DUKES  
Trial Attorney  
Computer Crime & Intellectual Property Section  
Criminal Division

/S/MONA SEDKY SPIVACK  
MONA SEDKY SPIVACK  
Trial Attorney  
Computer Crime & Intellectual Property Section  
Criminal Division

DATED: November 13, 2009

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 2009, I electronically filed the foregoing document with the Clerk of the Court using the Electronic Case Management system.

s/Terrence G. Berg  
United States Attorney  
211 W. Fort Street, Suite 2001  
Detroit, MI 48226  
[terrence.berg@usdoj.gov](mailto:terrence.berg@usdoj.gov)  
Bar No. P40295

s/Cheryl Bradford  
Legal Assistant  
United States Attorney's Office